## Board & Commission Members' Orientation Session Tuesday, October 2, 2007

9:15 - 10:00 a.m.

## Open Meetings and Public Records (0.75 hour CLE)\*

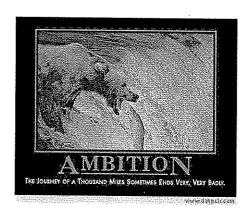
Julie Pottorff
Deputy Attorney General
Iowa Attorney General's Office

Hosted by Governor Chet Culver & Lt. Governor Patty Judge

#### PUBLIC RECORDS and OPEN MEETINGS

Julie F. Pottorff
Deputy Attorney General
Iowa Department of Justice

October 2, 2007



#### What is a "Public Record"?

- all records, documents, tape, or other information, stored or preserved in any medium
- of or belonging to this state or any county, city, township. . . .
- or any branch, department, board, bureau, commission, council, or committee of any of the foregoing

# Public Records May Be in Any Form ■ Paper ■ Audio or video tape ■ Computer tape or computer readable medium **Examples of Public Records Include:** Agenda materials for an open meeting **■** Contracts ■ E-mails Who Has Access to Public Records? ■ Every person has the right to: • Examine, publish or otherwise disseminate ▶ Make copies

## When Can People Examine and Copy Public Records?

- Rights can be exercised any time during the "customary "office hours. If office hours are less than 30 hours per week:
  - ► at any time between 9:00a.m. 12:00 noon and 1:00p.m. 4:00p.m.
  - ► Monday through Friday, except legal holidays

■ A person exercising the right to access public records and the lawful custodian may agree on a different time.



## Who Should Respond to Requests for Public Records?

- Delegate responsibility to a single contact person.
- Announce your contact person to the public.





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### How Should Requests for Public Records Be Managed?

- Honor requests in writing, by phone or by e-mail
- Do not relinquish control of original records
- Provide a reasonable number of copies
- Make receipt contingent on payment only if you have provided an estimate in advance

#### What Should I Charge?

- Charge only actual expenses:
  - ► A reasonable fee for cost of personnel necessary to supervise and copy records
  - ► A reasonable fee = actual cost
  - ► A reasonable fee = uniform application

- Do <u>not</u> charge fees to cover the costs of computer system depreciation, maintenance, electricity and insurance.
- Do <u>not</u> include employment benefits in the hourly rate for personnel to supervise or make copies.



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## Aren't Some Records Confidential? Some public records are open for examination and copying -- others are confidential A record may only be kept confidential under a specific provision of law ■ Provisions of law that make public records confidential are throughout the Iowa Code Some Records *Must* Be Confidential: ■ Pre-sentence investigation reports ■ Criminal history data ■ Information that a person has acquired immune deficiency syndrome (AIDS) Some Records May Be Confidential: ■ The following records shall be kept confidential, unless otherwise ordered . . . by the lawful custodian: → Peace officers' investigative reports and specific portions of electronic mail and telephone billing records.... Personal information in confidential personnel records of public bodies . . . .

### What if I'm Not Sure Whether the Record is Confidential?

- You can take time before responding:
  - → to decide whether to seek an injunction
  - ► to seek an injunction from the court
  - ▶ to decide if the record is public or confidential
  - ▶ to decide if the record should be made available

Consult with counsel, if necessary, but decide quickly:

- Usually do not take more than 10 business days.
- Never take more than 20 calendar days unless the requestor agrees





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#### What is a "Meeting"?

- Gathering in person or by electronic means;
- Formal or informal;
- Majority of the members of the body; with
- Deliberation or action



#### Who's Covered by the Law?

- Governmental bodies as defined by statute
- Multimembered bodies formally and directly created by a governmental body
- An advisory board, commission, or task force created by the governor or the general assembly

#### How Are Meetings Announced?

- Notice about the meeting should be:
  - Provided 24 hours in advance or as soon as reasonably possible – if, for good cause, 24 hours is impossible or impractical
  - ► Posted on a bulletin board or prominate place
  - · Sent to media who have requested notice

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#### What Should Be in a Notice?

- Information "reasonably calculated" to apprise the public:
  - ▶ Time
  - Date
  - ► Place
  - ► Tentative agenda

#### When and Where Can We Meet?

- A place "reasonably accessible" to the public
- A time "reasonably convenient" to the public
- Unless for "good cause" such a place or time is impossible or impracticable

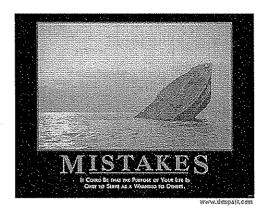
#### Are Minutes of Meetings Required?

- You must keep minutes that show:
  - ► Date, time & place of the meeting
  - Members present
  - Action taken
  - ► Result of each vote and sufficient information to indicate the vote of each member present

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#### Can We Meet in Closed Session?

- Yes, but only as authorized by law:
  - Fit under a statutory reason to close
  - ► Take a roll call vote on closing the session
  - ► Have votes of 2/3 body or all members present
  - Keep minutes and tape record the session
  - > Stick to the statutory reason for closing
  - · Return to open session for any final action



#### What Happens if I Violate the Law?

- <u>Both</u> laws can be enforced by:
  - Any aggrieved person
  - · A taxpayer to the State of Iowa
  - A citizen of the State of Iowa
  - ► The Attorney General
  - A county attorney

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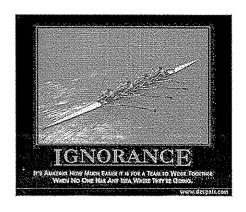
#### Upon finding a violation a court shall:

- Assess damages between \$100 -\$500
- Order payment of all costs and attorney fees
- Issue an order removing from office any person who has a prior violation for which damages were assessed

#### In addition, the Court:

- Shall issue an injunction (Public Records)
- Directing the lawful custodian to comply
- May issue an injunction (Open Meetings)
  - ► Ordering members to refrain from future violations





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■Ignorance of the law is <u>no</u> defense, but	
damages will not be assessed if you:	
<ul> <li>Voted against the violation</li> </ul>	·
→ Had good reason to believe and in good faith	
believed facts which, if true, would have	
indicated compliance with the law	
<ul> <li>Reasonably relied upon a decision of a</li> </ul>	
court or an opinion of the attorney general	
or the attorney for the governmental body.	
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www.iowaattorneygeneral.org	